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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/727,368	12/04/2003	Patricia Carlson	20986.001	6973

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Intellectual Property Department  
DEWITT ROSS & STEVENS S.C.  
US Bank Building  
8000 Excelsior Drive, Suite 401  
Madison, WI 53717-1914

EXAMINER

WARREN, DAVID S

ART UNIT	PAPER NUMBER
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2837

DATE MAILED: 07/21/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

H/A

<b>Office Action Summary</b>	<b>Application No.</b> 10/727,368	<b>Applicant(s)</b> CARLSON, PATRICIA	
	<b>Examiner</b> David S. Warren	<b>Art Unit</b> 2837	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 04 December 2003.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-10 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-10 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 04 December 2003 is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>12/04/2003</u> <u>3/12/04</u> | 6) <input type="checkbox"/> Other: _____  |

## DETAILED ACTION

### *Drawings*

1. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the modeling a musical passage comprised of the series of tones and chords (and the pre-existing passage) must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

***Claim Rejections - 35 USC § 102***

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1 – 10 are rejected under 35 U.S.C. 102(b) as being anticipated by Levine (The Jazz Theory Book, 1995). Regarding claims 1 and 10, on page 18 of Levine, Figure 2-7 shows the use of sequentially numbering the Ionian mode (root, 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup>, 5<sup>th</sup>, 6<sup>th</sup>, 7<sup>th</sup>, and octave are synonymous with 1, 2, 3, 4, 5, 6, 7, and 8 respectively). Figure 2-17 (page 22 of Levine) discloses modeling a musical passage using the numeric designations – specifically note the “7<sup>th</sup>” and “3<sup>rd</sup>” in the treble clef of fig. 2-17. The printed page book of Levine is provided for students of jazz music. Regarding claims 2 and 3, it can be seen in figure 2-7 (of Levine) that the sequential numbers are assigned to “do, re, mi,...” etc. Regarding claim 4, Levine (figure 6-53) discloses the well-known practice of naming chords according to scale sequence number in this case, Levine uses Roman numerals I, II, III, IV, V, VI, and VII. Roman numerals are functionally equivalent to Arabic numerals. As can be seen in Levine’s fig. 6-53, the chord designated “I” constitutes the scale degrees of 1, 3, and 5; chord designated II constitutes scale degrees 2, 4, and 6; chord designated III constitutes scale degrees 3, 5, and 7; and so on. The Applicant may find it convenient to compare

figs. 6-53 and 2-7 of Levine. Regarding claim 5, all limitations have been discussed supra except modeling both scale and chord sequences simultaneously. Levine discloses this in fig. 2-17 the use of "3<sup>rd</sup>" and "7<sup>th</sup>" in the staff lines as well as "II," "V," and "I" below the staff. Regarding claim 6, all limitations have been discussed supra except modeling a pre-existing musical passage. Levine meets this limitation in fig. 2-18 (again showing 3rds and 7ths in the staff) by applying the method to Thelonious Monk's well-known jazz classic from the 1950's 'Round Midnight (i.e., a pre-existing musical passage). Regarding claims 7 – 9, see discussion above pertaining to claims 2 – 4, respectively.

4. Claims 1 – 4 and 10 are rejected under 35 U.S.C. 102(b) as being anticipated by Aebersold (Aebersold publication, 1979). Regarding claims 1 and 10, Aebersold discloses the use of numbering the scale degrees of the C Ionian mode (page 7, page is titled "Exercise for Turnaround No. 3). While Aebersold does not explicitly number each scale degree it can be seen by comparing measures 1, 2, 7, 12, etc. that each scale degree is thought of in terms of numbers (notice the small numbers beneath each staff line – the notes that correspond with the C and Ab are Ionian modes). Regarding claims 2 and 3, it can be seen that these numbers coincide with "dó, re, mi..." etc. Regarding claim 4, Aebersold uses Roman numerals to designate chords based on scale degree (see page 13). Notice the "II/V7/I" in the page's title. Again, not all chords are represented, but this explicitly implies that numbering the chords based on scale degree is inherent. In other words, it is explicitly implied (indeed, inherent) that if I, II, and V chords exist, then III, IV, VI, and VII chords exist.

5. Claims 1 – 4 and 10 are rejected under 35 U.S.C. 102(b) as being anticipated by Coker et al. (Patterns for Jazz, 3<sup>rd</sup> ed., 1970). Regarding claims 1 – 3 and 10, Coker discloses the use of assigning sequential numeric designations (top page 1) and modeling a musical passage therefrom (pages 23, 27), and supplying the model to the students (i.e., students of jazz purchase such books as Coker's). Regarding claim 4, Coker discloses the use of sequentially numbering chords (fig. 2, page 36).

1. Claims 1 – 4 and 10 are rejected under 35 U.S.C. 102(b) as being anticipated by Curtis (First Steps to Ear Training, 1963). Regarding claims 1 – 3 and 10, Curtis discloses sequentially numbering the notes of an Ionian mode (see figures on page 1 and 2) and modeling a passage using the numbers (see Step V, page 3). Also compare the figure of the keyboard on page 1 with the Applicant's figure 2.

### ***Conclusion***


5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to David S. Warren whose telephone number is 571-272-2076. The examiner can normally be reached on M-F, 9:30 A.M. to 6:30 P.M..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David Martin can be reached on 571-272-2800 ext 37. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Art Unit: 2837

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

dsw

  
MARLON T. FLETCHER  
PRIMARY EXAMINER